

ELECTIONS: At special election for sheriff candidates may be nominated by political committees or petitions;
SHERIFFS: conventional ballot to be used; names of candidates must be published at least seven days before election; precinct judges and clerks to be same as at general election.

November 16, 1950

11-16-50

Mr. David P. Plummer
Clerk of the County Court
Clinton County
Plattsburg, Missouri



Dear Sir:

This in answer to your letter of recent date requesting an official opinion of this department, reading as follows:

"By an order of Record, the County Court of Clinton County has ordered me to ask your office for an opinion on the following questions:

"In filling the vacancy existing in the office of the Sheriff of Clinton County, Missouri, caused by the death of former Sheriff, Charles Wamsley, on November 5, 1950, the Court has ordered a special election for December 2nd, 1950;

"1. What is the latest date a candidate may file his declaration with the Clerk and what is the proper procedure of filing;

"2. What form of ballot should be used;

"3. When and for how long should the clerk publish copy of the ballot;

"4. Must the precincts at said Special Election be the same as at the regular elections, or may the Court reduce the number;

"5. Shall the same number of judges and clerks be appointed for the special election, or may the election be held with a smaller number?"

Mr. David P. Plummer

Section 13143, R.S. Mo. 1939, relative to vacancy in the office of sheriff of a county, provides, in part, as follows:

"Whenever from any cause the office of sheriff becomes vacant, the same shall be filled by the county court; if such vacancy happen more than nine months prior to the time of holding a general election, such county court shall immediately order a special election to fill the same, and the person by it appointed shall hold said office until the person chosen at such election shall be duly qualified, otherwise the person appointed by such county court shall hold office until the person chosen at such general election shall be duly qualified; * * * Such election shall be held within thirty days after the vacancy occurs, and the county court shall cause notice of the same to be published in some newspaper published within the county, and if there should be no newspaper published in said county, shall then give notice, by ten written handbills, posted up in ten of the most public places in the county, for twenty days prior to the day of holding such election. Upon the occurrence of such vacancy, it shall be the duty of the presiding justice of the county court, if such court be not then in session, to call a special term thereof, and cause said election to be held in pursuance of the provisions of this section, and the election laws regulating general elections in this state."

It is to be noted that such section provides that the election is to be held in pursuance of the provisions of such section and the election laws regulating general elections. The present provisions in law relative to making nominations by party committees are found in Section 11539, Laws of Missouri, 1941, page 354, and Section 120.55, House Bill No. 2057, 65th General Assembly, which sections provide:

Sec. 11539. "The central committee of a political party shall consist of the largest body elected for the purpose of representing and acting for the party in the interim between conventions of the

Mr. David P. Plummer

party. That for the purpose of making nominations to fill vacancies resulting from death or resignation and not otherwise, on a ticket previously nominated a majority of all the members-elect of a central committee shall be necessary to take action. That a central committee shall not have the power to delegate its authority to make nominations to any person or number of persons, and that any act consequent upon any such delegation of authority shall be held to be null and void. That no central committee shall have the power to substitute, to fill any vacancy, the name of any person who is not known to be of the same political belief and party as the person for whom he is substituted."

Sec. 120.55. "When a vacancy, occurring in the nominations after the holding of any primary, has resulted from the death or resignation of a nominee of the party who was selected at such primary or when a vacancy in office occurs after the last Tuesday in April and before the general election held in the same year, which vacancy is to be filled for the unexpired term at such general election, the party committee of the county, district or state, as the case may be, shall have authority to make nominations to fill such vacancies. Nominations to fill such vacancies shall be filed, as the case may be, either with the secretary of state not later than fifteen days before the day fixed by law for the election of the persons in nomination or with the board of election commissioners or county clerk not later than ten days before such election. No names shall be allowed on any ticket until the required fee has been paid."

While such sections do not specifically provide for the nomination by party committees of candidates for the office of sheriff at a special election, we believe that the provision in Section 11539, stating that the central committee of a political party represents and acts for the party in the interim between

Mr. David P. Plummer

conventions of a party, gives to such committee the power to make nominations for such office under our system of holding elections. In the case of State ex rel. Hayden v. Thomas, 182 S.W. (2d) 584, the Supreme Court said, l.c. 586:

" * * * * Our laws recognize political parties as useful adjuncts to our system of government. Accordingly, while preserving the right of candidates to run for office independently, we have enacted laws regulating nominations by political parties. It is the policy of those laws to require party nominations to be made by the electors of the party where possible, but we do not think the law prevents a political party from making nominations by its duly constituted committee when it has had no opportunity to make them by its electors at the regular primary. In other words, the state primary law is inapplicable to nominations for vacancies in office occurring too late to be voted on at the state primary. Formerly such vacancies were filled at special elections and nominations therefor were made by or under the direction of party committees. Under present statutes such vacancies are filled at the next general election, but Section 11546 still provides that the state primary law 'shall not apply to special elections to fill vacancies.' Considering all the statutes mentioned, we think the state primary law provides the method for nominations to all offices to be filled at the ensuing general election, except as to vacancies occurring too late to be voted on at the state primary."

We believe that under the doctrine of this case nominations by political parties are to be made at all elections, and that the county committees of the political parties presently existing in Clinton County are entitled to make nominations for such office.

The provisions for making nominations by electors' petitions are found in Sections 120.01, 120.03 and 120.06, House Bill No. 2057, 65th General Assembly. Such sections provide as follows:

Mr. David P. Plummer

Sec. 120.01. "Electors may nominate candidates for public offices to be filled by election within the state. Such nomination shall be made by filing a certificate of nomination executed with the formalities prescribed for the execution of an instrument affecting real estate."

Sec. 120.03. "The certificate of nomination shall be signed by a number of electors, resident within the district or political division for which the candidate is presented, equal to two per cent of the entire vote cast at the last preceding election in the state, the county or other division or district for which the nomination is made. The signers shall declare in the certificate that they are bona fide supporters of the candidate sought to be nominated and have not aided and will not aid in the nomination of any other candidate for the same office."

Sec. 120.06. "Certificates of nominations filed with the secretary of state shall be filed not more than ninety and not less than seventy days before the day fixed by law for the election of the person in nomination. Certificates of nomination herein directed to be filed with the clerk of the county court of each county shall be filed not more than ninety days and not less than seventy days before election."

While it is true that Section 120.06 provides that the certificates of nomination are to be filed with the clerk of the county court not more than ninety and not less than seventy days before election, we believe that any filing by such candidate may be made at any time until the publication of a list of candidates must be made by the county clerk. The date upon which the clerk must publish the list of candidates for an office is found in Section 11542, R.S. Mo. 1939, which makes such period seven days before an election. The nominations by the party political committees must also be certified to the county clerk at least seven days before the election so that the county clerk may be able to publish the names of the candidates as required by Section 11542.

Mr. David P. Plummer

The ballot used should be that prescribed by Section 111.42, House Bill No. 2049, 65th General Assembly, which provides, in part, as follows:

" * * * The names of all candidates to be voted for in each election district or precinct shall be printed on one ballot; all nominations of any political party or group of petitioners being placed under the party name designated by them in their certificates of nomination or petitions, * * * Each list of candidates shall be placed on the ballot in the order of the voting strength of the respective parties as determined by the vote for governor at the last preceding general election; the party receiving the highest number of votes for governor at such election to be placed in the first or left-hand column, the party receiving the next highest number of votes as herein described shall be placed in the next to the right or second column; this order to continue till all have been placed. Those lists of candidates nominated by petitioners or which have no determining vote as herein described shall be placed on the ballot to the right of those determined by previous elections as herein designated, in such order as may be determined by the election officials or clerk of the county court whose duty it is to print such ballot. At the top on the face of the ballot shall be printed the words 'official ballot' followed by the designation of the date of the election. The ballot shall be plain white paper, through which the printing or writing cannot be read. The party name shall be printed in capital letters, not less than 18-point in size and a circle one-half inch in diameter shall be printed immediately below the line in which such party name is printed. The names of candidates shall be printed in capital letters not less than 8-point in size nor more than 10-point size and at the beginning of each line in which the name of a candidate is printed a small square shall be printed, the sides of which shall not be less than one-fourth of an inch in length. The list of candidates of the

Mr. David P. Plummer

several parties and groups of petitioners shall be placed in separate columns on the ballot, with a heavy perpendicular line between each list, in such order as is provided for in this section. * * * "

We find no provision in the statutes for consolidating or reducing the number of precincts for a special election for sheriff. We find no provision for using a different number of judges and clerks for this special election, and since the law provides that it shall be held in pursuance of the election laws regulating general elections in the state, it will be necessary to follow the provisions of a general election law with regard to the number of judges and clerks.

CONCLUSION

It is the opinion of this department that:

1. The county committees of the existing political parties in Clinton County may nominate candidates for sheriff at the special election to be held for such office December 2, 1950.
2. Candidates may be nominated for such office by petition signed by two per cent of the voters, and nominations by petitions and by the committees of the political parties may be made at any time prior to the date the names of the candidates must be published by the County Clerk. The nominations so certified to the Clerk must be published at least seven days before the election date.
3. The form of ballot is that prescribed by Section 111.42, House Bill No. 2049, 65th General Assembly.
4. The County Court has no authority to consolidate precincts for such special election.
5. The same number of judges and clerks are to be appointed for such election as are appointed at the regular general elections.

Respectfully submitted,

APPROVED:

J. E. TAYLOR
Attorney General

C. B. BURNS, JR.
Assistant Attorney General

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